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**Cc:** Zellmer, James A - DNR[James.Zellmer@wisconsin.gov]; Heilman, Cheryl W - DNR[Cheryl.Heilman@wisconsin.gov]; Holst, Linda[holst.linda@epa.gov]; Pierard, Kevin[pierard.kevin@epa.gov]; Ireland, Scott[ireland.scott@epa.gov]; Bauer, Candice[bauer.candice@epa.gov]; Gayan, Sharon L - DNR[Sharon.Gayan@wisconsin.gov]; Stocks, Adrian G - DNR[Adrian.Stocks@wisconsin.gov]  
**From:** Stevens, Patrick K - DNR  
**Sent:** Wed 8/23/2017 1:50:27 PM  
**Subject:** Updates to EPA LAR  
[20170809 DNR Response to EPA Comments on Rule Pkg 3 and 4.pdf](#)  
[New Issues Raised by EPA.pdf](#)  
[Issue #19-EPA approval request letter.pdf](#)  
[2017 Wisconsin Act 21-CAAP Legislation.pdf](#)  
[2011 Wisconsin Act 207- CAAP Legislation.pdf](#)

Hello Chris:

Thank you for your continued cooperation in resolving the deficiencies identified during EPA's 2011 review of Wisconsin's legal authority under the Clean Water Act. I have inserted WDNR's perspective of where we stand on these issues into your original email below. I am encouraged by the progress made in resolving these issues since the June 28<sup>th</sup> conference call between Acting Regional Administrator Kaplan and Secretary Stepp and am hopeful that we can use the September 13 meeting to discuss the few remaining unresolved issues and agree on a path toward resolution.

I do apologize that I am unable to attend the upcoming meeting, but this was the first available date that all necessary WDNR and EPA staff could attend. I assure you that we will have the right people in attendance at this meeting to discuss and, hopefully, resolve any remaining issues related to the LAR.

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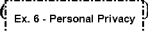
Visit our survey at <http://dnr.wi.gov/customersurvey> to evaluate how I did.

Pat Stevens

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**From:** Korleski, Christopher [<mailto:korleski.christopher@epa.gov>]  
**Sent:** Wednesday, August 09, 2017 5:10 PM  
**To:** Stevens, Patrick K - DNR  
**Cc:** Zellmer, James A - DNR; Holst, Linda; Pierard, Kevin; Ireland, Scott; Bauer, Candice; Korleski, Christopher  
**Subject:** EPA's Perspective on WDNR LAR Issues and Prep for 9/13 Meeting

Hello Pat:

I have been following up with staff on the various issues you raised with me at the conclusion of the State Directors' meeting on June 14<sup>th</sup>. This e-mail relates to some of the concerns you raised about the ongoing (and long-standing) discussions between WDNR and EPA about the pending petition for withdrawal - specifically, issues pertaining to Wisconsin's legal authority to fully implement the Clean Water Act.

I understand that on June 28, 2017 (while I was happily out on vacation) Secretary Stepp and Acting Regional Administrator Kaplan had a conference call wherein WDNR raised concerns regarding: 1) EPA's decision that some items in the Attorney General's (AG) statement would require further actions to resolve; and 2) EPA's identification of "new" issues related to WDNR's legal authority. At the conclusion of the teleconference, I understand that WDNR and EPA agreed:

- that EPA would set up a face-to-face meeting at the Water Director's level to discuss these issues;
- that, in preparation for this meeting, EPA would further review the AG's statement and work with WDNR legal staff to determine what issues can readily be resolved; and
- that WDNR would send to EPA a list of the new issues for further discussion.

In preparation for this meeting, I wanted to advise you of EPA's perspective on the legal authority review:

- Since the initial identification of 75 issues in 2011, the collaborative work of the WDNR and EPA staffs has resulted in **the full resolution and EPA approval of 21 issues**.

WDNR agrees these issues are fully resolved.

- EPA's expectation, pending final review - including review of WDNR's newly-provided responses to questions EPA sent to WDNR on June 16th, is that **21 additional issues**—from Rule Packages 3 and 4—will likely be resolved before December of 2017.

WDNR believes that RP 3 and 4 have resolved the issues addressed by those rule changes. WDNR's response to EPA's questions on these rule packages has been provided to EPA. A copy of that correspondence is attached to this email.

- Additionally, EPA has worked closely with WDNR staff in reviewing draft rules included in Rule Package 5 and is ready to expeditiously review the **10 issues** addressed in Rule Package 5 when Wisconsin completes its rulemaking process and submits the final rules to EPA.

The Wisconsin Natural Resources Board approved Rule Package 5 for Adoption on August 9, 2017. This rule is in the Final Steps of rulemaking. WDNR will submit the rules to EPA after the rules are published in the Administrative Register. Remaining steps in the rulemaking process include approval by the Governor and review by the legislature.

- WDNR and EPA staff have, since the June 28 teleconference, resumed discussions of the legal authority issues pertaining to the 2012 Wisconsin AG Statement (with a focus on Issues 5, 12, 58, 59, 60, 63, 64, and 75 – which were addressed by the letter but which were not fully resolved). These issues were tabled last fall based on a mutual agreement among our respective staffs that review of Rule Packages 3, 4, and 5 would take precedence. We are optimistic that most of these issues are now on a path to resolution and we anticipate

that our respective staffs will report out the status of these issues prior to our face-to-face meeting, including any issues that they are unable to resolve through staff discussions.

WDNR and EPA staff are continuing to discuss these issues. We will be prepared to report on the status at the September 13 meeting.

- We also anticipate that further discussion may also be needed on the following issues to ensure our agencies agree on a path forward:

- the statutory emergency exemption (Issue 69);

WDNR agrees that we should continue to discuss this this issue. We believe this issue could be resolved through an MOA Addendum with EPA rather than a change to Wis. Stats.

- aquatic production facilities (Issue 19 pertaining to submission and review of WDNR's completed actions to address this issue). (Note: EPA believes that all the state has to do is formally submit the statutory change they already made.);

WDNR believes this issue is resolved and further discussion is not needed. WDNR has submitted the statutory changes to EPA.

- two issues where EPA believes statutory changes may be needed (Issues 3 and 50);

WDNR believes these two issues are resolved and no further statutory changes are needed. WDNR staff have requested a call with EPA staff to further discuss and confirm the status of issues. If we are not able to resolve a path forward, WDNR agrees these issues may require further discussion at the September 13 meeting.

○ issues where we believe WDNR will be scheduling future rulemaking but where EPA would like to understand the scope and timeline for such activities (cooling water - Issue 4 and stormwater-related issues - 24, 25, 52, 53, 55, 56, 57, and 67); and

WDNR has received approval on the statement of scope for proposed cooling water intake rules and WDNR is currently in the process of drafting the rules. Once drafting is completed, the next step in the rulemaking process is to solicit comments on the economic impact of the proposed rules. Regarding the stormwater-related issues, WDNR has taken steps to address all of the stormwater-related issues listed above. WDNR will be conferring with EPA staff on a path toward resolution of these issues prior to the September 13 meeting.

○ issues where further WDNR agency action, outside of rulemaking, is necessary (issues 23 and 26).

EPA has indicated that to resolve these issues, a general stormwater permit for selected Wisconsin Department of Transportation construction sites must be issued. WDNR is currently drafting such a permit. In accordance with 2015 Wis. Act 307, the statutory deadline for issuance of the WPDES Stormwater Construction General Permit is June 30, 2018.

- Also, EPA would like to receive an update on WDNR's progress on issue 5 in light of Quinn Williams statement during our June 28<sup>th</sup> call that WDNR is committed to seeing a statutory change to address this issue consistent with a State Court decision.

WDNR will provide an update on proposed statutory changes to address Issue 5 at the September 13 meeting.

- EPA believes that work can be completed by the two teams in advance of the face-to-face meeting to determine which issues are significant and require higher level discussion. This advance work would help assure an efficient meeting, focused on the highest priority items.

WDNR agrees. We have been discussing a number of issues with EPA staff in an effort to seek

final resolution of all remaining issues.

- EPA would also like to utilize a staff level discussion prior to the face-to-face meeting for discussion of the new issues mentioned by WDNR during the June 28<sup>th</sup> call that have apparently arisen outside the specific scope of the original 2011 letter. We have, however, not yet received the list of new issues which WDNR indicated it would provide to us as a follow-up to the June 28 call. We request that WDNR share those new issues that are of concern in writing and that our staffs discuss any such new issues prior to the face-to-face meeting to ensure that EPA understands these issues and our staffs have an opportunity to prioritize them prior to the meeting.

The “new” issues are identified in WDNR’s attached response to EPA’s questions following review of Rule Packages 3 and 4. We identified issues that we believe are new and outside the scope of EPA’s original 2011 letter. For your convenience, a separate list of these new issues is attached. Additionally, EPA included two new issues in Rule Package 5 that we believe are outside the scope of the original 2011 letter. These new issues are also included in the attached list.

While we are happy to discuss these issues with EPA, WDNR strongly believes that any new issues or questions from EPA should be addressed in a process that is separate from resolving the issues identified in the 2011 Legal Authority Review.

- As you know, EPA’s team will be travelling to Madison for the face-to-face meeting on September 13<sup>th</sup>. At that meeting, I would like to discuss all remaining unresolved issues and their path to resolution, including the issues described above and any other significant issues that WDNR wishes to raise. Given the importance and the sizeable scope of this upcoming discussion effort and the commitment made by the parties during the June 28<sup>th</sup> call, it is unfortunate that you will not be able to attend. However, EPA will work with the attending members of the WDNR team to put this process on a path to completion.

We look forward to your visit and are confident that our staff can work cooperatively to find a path toward resolution on any issues that are not resolved prior to the meeting. I am hopeful that my schedule changes so I can attend this meeting, but assure you that WDNR will have the right people at this meeting to complete this work.

I hope that this e-mail clarifies EPA's perception of the status of the legal authority review. I certainly would welcome getting a clear understanding of WDNR's perspective, especially if WDNR's understanding of the status of the legal authority review is different from that set forth above.

Finally, I will be communicating with you via separate e-mail on several of the other issues you raised during our brief talk on June 14<sup>th</sup>.

Thanks.

Chris

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Chris Korleski

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